



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2018-0669; FRL-9992-26-OW]

State of North Dakota Underground Injection Control Program; Class I, III, IV, and V Primacy Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an application from the State of North Dakota under the Safe Drinking Water Act (SDWA) to revise the State's existing Underground Injection Control (UIC) Program for Class I, III, IV, and V injection wells located within the State, except those in Indian country. North Dakota has revised its UIC Class I, III, IV, and V program regulations to transfer primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality.

DATES: This final rule is effective on [insert date 30 days from date of publication in the *Federal Register*]. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on [insert date 30 days from the date of publication in the *Federal Register*]. For judicial purposes, this final rule is promulgated as of [insert date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA-HQ-OW-2018-0669**. All documents in the docket are listed on the <http://www.regulations.gov> web

site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-2322; fax number: (202) 564-3754; email address: carey.kyle@epa.gov, or Omar Sierra-Lopez, Underground Injection Control Unit, Safe Drinking Water Program, Office of Water Protection (8WP-SUI), U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number: (303) 312-7045; fax number: (303) 312-7517; email address: sierra-lopez.omar@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The EPA approved North Dakota's UIC program as meeting the requirements for primary enforcement responsibility (primacy) for Class I, III, IV, and V injection wells, under section 1422 of the Safe Drinking Water Act (SDWA), on September 21, 1984. The State has revised its UIC Class I, III, IV, and V program statutes and regulations to transfer this authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality.

II. Legal Authorities

These regulations are being promulgated under authority of sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h-1 and 300j-9.

A. Revision of State UIC Programs

As required by section 1421 of the SDWA, the EPA promulgated minimum requirements in the *Code of Federal Regulations* (CFR) at 40 CFR part 145 for effective state UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Under section 1422 of the SDWA, once the EPA approves a state UIC program, the state has primary enforcement responsibility for the UIC program. A state may revise its UIC program as provided under 40 CFR 145.32(a) and by following the procedures described under 40 CFR 145.32(b), which require the state to submit a modified program description, an Attorney General's statement, a Memorandum of Agreement, or other such documentation as the EPA determines to be necessary under the circumstances (40 CFR 145.32(b)(1)). States with approved programs are required to notify the EPA whenever they propose to transfer all or part of the approved state agency to any other state agency and to identify any new division of responsibilities among the agencies involved. Organizational charts required in the state's original primacy approval package must be revised and resubmitted. The new agency is not authorized to administer the program until approval by the Administrator (40 CFR 145.32(c)).

All revisions to the UIC program are federally enforceable as of the effective date of the EPA's approval of the respective revision and 40 CFR part 147 codification.

In the EPA's announcement of its proposed rule in the *Federal Register* on December 4, 2018, Table 1 in the proposed amendment to 40 CFR part 147 indicated a State effective date of 2018 for the revisions to the North Dakota Century Code and North Dakota Administrative

Code. In the final rule, the EPA is revising § 147.1751(a) to identify 2019 as the effective date of the statute and regulations that North Dakota submitted to the EPA in its program revision submission. The revised statute specified in § 147.1751(a) was enacted in 2018 and will be fully effective in April 2019. The revised regulations in § 147.1751(a) were promulgated in 2018 and became effective on January 1, 2019.

Consistent with the EPA Guidance 34, *Guidance for Review and Approval of State Underground Injection Control (UIC) Programs and Revisions to Approved State Programs*, the EPA considers state-initiated program revisions to transfer all or part of any program from the approved authority to another state agency as substantial program revisions. Under the EPA's regulations, this means that there was an opportunity for public comment and to request a public hearing (40 CFR 145.32(b)(2)).

B. Indian Country

The EPA's approval of North Dakota's application to transfer its SDWA UIC Class I, III, IV, and V primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality does not extend to Indian lands. Pursuant to the EPA's UIC regulations at 40 CFR 144.3, Indian lands "means 'Indian country' as defined in 18 U.S.C. 1151." As defined in 18 U.S.C. 1151, Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; any land held in trust by the United States for an Indian tribe; and any other areas that are Indian country within the meaning of 18 U.S.C. 1151. The EPA, or eligible Indian tribes, as appropriate, will retain responsibilities under the SDWA UIC program for Class I, III, IV, and V injection wells in Indian country.

III. North Dakota's Application

A. Notice of Completion

On September 18, 2018, the EPA received a complete program revision package from the State of North Dakota, requesting approval of its revised UIC regulations for Class I, III, IV, and V injection wells, to transfer primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality. The EPA has determined that the application contains all the required elements.

The UIC program revision package from the State of North Dakota includes revised versions of: 1) the description of the State's UIC program (40 CFR 145.23); 2) copies of all applicable State statutes, regulations, and forms (40 CFR 145.22(a)(5)); 3) the Attorney General's statement that the State has adequate legal authority to carry out the program described and to meet the requirements of 40 CFR part 145; and 4) the Memorandum of Agreement between the State of North Dakota and the EPA's Region 8 Administrator (40 CFR 145.25).

B. Public Participation Activities Conducted by the State of North Dakota

On April 12, 2018, the North Dakota Department of Environmental Quality provided public notice of its intent to amend and adopt North Dakota's 1422 Underground Injection Control Rules. The Department published the notice in 52 North Dakota newspapers. The Department accepted written comments on the proposed rule changes between April 12, 2018 and May 31, 2018. The Department received no comments. The Department held a public hearing regarding the UIC rules on March 21, 2018. There were no attendees.

C. Public Participation Activities Conducted by the EPA

On December 4, 2018, the EPA published a public notice in the Bismarck Tribune announcing the Agency's proposed approval, request for public comment, and notice of a public hearing to be held, if requested within 30 days, on January 8, 2019, and posted it on the EPA Region 8's website at: <https://www.epa.gov/uic/underground-injection-control-epa-region-8-comment-nd-sd-ut-and-wy>.

The EPA received three comments in response to the Agency's proposed rule. Further information regarding the comments can be found in the docket for this action under Docket ID No. **EPA-HQ-OW-2018-0669**. The EPA did not receive a request for a public hearing; as a result, the EPA announced that no public hearing would be held.

IV. The EPA's Final Action

A. What is the EPA finalizing in this Action?

In this final rule, the EPA is approving the State of North Dakota's application to transfer its Class I, III, IV, and V primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality and to make conforming changes to its regulations to reflect such transfer. Regulations under 40 CFR part 147 set forth the applicable UIC programs for each of the states. This rule updates 40 CFR part 147, subpart JJ, to reflect the transfer of authority.

The supporting documents for this final rule are part of the public record in the EPA's Docket No. **EPA-HQ-OW-2018-0669**. This action amends 40 CFR part 147, subpart JJ, to incorporate by reference the revised EPA-approved State statutes and regulations. The EPA will continue to administer its UIC program for Class I, III, IV, and V injection wells in Indian country.

The EPA will continue to oversee the State of North Dakota's administration of UIC Class I, III, IV, V, and VI programs as authorized under the SDWA. Part of the EPA's oversight responsibility will require State quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between the EPA and the State of North Dakota, signed by the Regional Administrator on September 18, 2018, provides the EPA with the opportunity to review and comment on all draft permits.

B. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing the Federal regulatory text that incorporates by reference the federally authorized North Dakota UIC program for Class I, III, IV, and V injection wells, except those in Indian country. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the North Dakota statutes and regulations described in the amendments to 40 CFR part 147 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the U.S. Environmental Protection Agency, Region 8, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA is revising the incorporation by reference at 40 CFR 147.1751 with "EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI," dated January 2019.

The EPA is also revising table 1 to paragraph (a) of §147.1751, which lists the EPA-approved North Dakota statutes and regulations contained in the material incorporated by reference at 40 CFR 147.1751.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore the EPA did not submit it to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or record-keeping requirements will be based on the State of North Dakota's UIC regulations, and the State of North Dakota is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities as this rule approves the State of North Dakota's UIC program revisions. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. The EPA’s approval of the State of North Dakota’s program revisions does not constitute a Federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state rather than a Federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no Federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves the State of North Dakota's UIC program revisions.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action simply approves North Dakota's transfer of its primary enforcement authority for its Class I, III, IV, and V wells, pursuant to which the State of North Dakota will be implementing and enforcing a State UIC regulatory program that is as stringent as the existing Federal program.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: April 8, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency is amending 40 CFR part 147 as follows:

PART 147 – STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*; and 42 USC 6901 *et seq.*

2. Amend § 147.1751 by:

- a. Revising the introductory text and paragraph (a);
- b. Adding the word “and” at the end of paragraph (b)(1);
- c. Removing paragraphs (b)(2) and (3);
- d. Redesignating paragraph (b)(4) as paragraph (b)(2);
- e. Revising paragraphs (c), (d), (e), (f), (g), and (h); and
- f. Adding paragraph (i).

The revisions and addition read as follows:

§ 147.1751 State-administered program—Class I, III, IV, V and VI wells.

The UIC Program for Class I, III, IV, and V wells in the State of North Dakota, except those located on Indian lands, as defined under 40 CFR 144.3, is the program administered by the North Dakota Department of Environmental Quality, approved by the EPA pursuant to section 1422 of the SDWA. Notification of this approval was published in the *Federal Register* on [insert date of publication of the final rule in the *Federal Register*]; the program is effective

[insert 30 days after publication in the *Federal Register*]. The UIC Program for Class VI wells in the State of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Industrial Commission (NDIC), approved by the EPA pursuant to section 1422 of the SDWA. Notification of this approval was published in the *Federal Register* on April 24, 2018; the effective date of the NDIC UIC Class VI program is April 24, 2018. The State-administered UIC programs for Classes I, III, IV, V, and VI consist of the following elements, as submitted to the EPA in the State's program applications.

- (a) The requirements set forth in the State statutes and regulations approved by the EPA for inclusion in "EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI," dated January 2019, and listed in table 1 to this paragraph (a), are incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. The Director of the *Federal Register* approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material incorporated by reference in this paragraph (a) may be inspected at the U.S. Environmental Protection Agency, Region VIII, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202-1129. If you wish to obtain this material from the EPA Regional Office, call (303) 312-1226. Copies of this material also may be inspected at the EPA Headquarters Library, in the Water Docket, at the EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. If you wish to obtain this material from the EPA Docket Center, call (202) 566-2426. Copies of this material also may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to

Table 1 to paragraph (a) -- EPA-Approved North Dakota SDWA Section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI

State citation	Title/subject	State effective date	EPA approval date
North Dakota Century Code Sections 38-12-01 through 38-12-03	Regulation, Development and Production of Subsurface Minerals	1980	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 61-28-02 and 61-28-06	Control, Prevention and Abatement of Pollution of Surface Waters	1989	March 6, 1991, 56 FR 9418
North Dakota Century Code Sections 61-28.1-01 and 61-28.1-12	Safe Drinking Water Act	2019	[insert date of publication in the Federal Register], [insert Federal Register citation]
North Dakota Administrative Code Sections 33.1-25-01-01 through 33.1-25-01-18	Underground Injection Control Program	2019	[insert date of publication in the Federal Register], [insert Federal Register citation]
North Dakota Administrative Code Sections 43-02-02-01 through 43-02-02-50	Subsurface Mineral Exploration and Development	1986	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 43-02-02.1-01 through 43-02-02.2-19	Underground Injection Control Program	1984	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 38-22-01 through 38-22-23	Carbon Dioxide Underground Storage	2009	April 24, 2018, 83 FR 17761
North Dakota Administrative Code Sections 38-08-16 and 38-08-17	Control of Oil and Gas Resources	2013	April 24, 2018, 83 FR 17761
North Dakota Administrative Code Sections 43-05-01-01 through 43-05-01-20	Geologic Storage of Carbon Dioxide	2013	April 24, 2018, 83 FR 17761

(c) The Memorandum of Agreement for the Class I, III, IV, and V Underground Injection Control Program between EPA Region 8 and the North Dakota Department of Environmental Quality, signed by the EPA Regional Administrator on September 18, 2018.

- (d) The statement of legal authority, “Class I, III, IV, and V Underground Injection Control Program, Attorney General’s Statement,” signed by the Assistant Attorney General of North Dakota on July 30, 2018, and the “Supplement to the Attorney General Statements Relating to Programs Being Transferred to the North Dakota Department of Environmental Quality,” signed by the Assistant Attorney General of North Dakota on October 23, 2018.
- (e) The Class I, III, IV, and V Underground Injection Control Program Description and any other materials submitted as part of the program revision or as supplements thereto.
- (f) The Memorandum of Agreement for the Class VI Underground Injection Control Program between EPA Region 8 and the North Dakota Industrial Commission, signed by the EPA Regional Administrator on October 28, 2013.
- (g) The Memorandum of Understanding for Class VI between the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division and the North Dakota Department of Health, Water Quality Division Related to the Underground Injection Control Program, signed on June 19, 2013.
- (h) The statement of legal authority, “Class VI Underground Injection Control Program, Attorney General’s Statement,” signed by the Attorney General of North Dakota on January 22, 2013.
- (i) The Class VI Underground Injection Control Program Description and any other materials submitted as part of the program revision or as supplements thereto.